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| DOCKET #NNH-CV14-6049044-S | : | SUPERIOR COURT |
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| NUCAP INDUSTRIES INC. Et Al | : | J.D. OF NEW HAVEN |
| | : | |
| VS. | : | AT NEW HAVEN |
| | : | |
| PREFERRED TOOL AND DIE, INC. Et Al | : | SEPTEMBER 10, 2014 |

**DEFENDANT, ROBERT A. BOSCO, JR.'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION TO DISMISS/TRANSFER FOR IMPROPER VENUE**

Pursuant to Practice Book §10-30, the Defendant, Robert A. Bosco, Jr. ("Bosco,") by and through undersigned counsel, hereby moves to Dismiss the present action due to improper venue.

I. FACTUAL BACKGROUND

Plaintiff NUCAP Industries, Inc. alleges, *inter alia*, that Defendant Bosco resides at 12 Executive Hill Road in Wolcott, Connecticut (¶12). Defendant Preferred Tool and Die is a Connecticut corporation with a place of business at 30 Forest Parkway in Shelton (¶10). The Complaint further alleges that Defendant Bosco worked to "unfairly compete with [NUCAP] (¶ 5); that he had access to confidential and proprietary information and executed an employment and/or non-compete agreement (¶ 36); that he was terminated from his employment with NUCAP (¶ 50); that he became affiliated with Preferred and was competing against NUCAP (¶ 51, 55); that he registered and attended a SAE Brake Colloquium in October of 2013 and was working for Preferred (¶ 59); and that he attended meetings with or on behalf of Preferred where the "discussed strategies for the sale, manufacture, design and marketing of brake products and technologies on behalf of Preferred" (¶ 61).

There is currently a lawsuit captioned *Bosco v. Eyelet Tech NUCAP Corp and NUCAP Industries, Inc.*, Docket #WWY-CV-14-6023433-S, pending in the Judicial District of

Waterbury. The Waterbury lawsuit was commenced by Writ, Summons and Complaint by Bosco with a return date of May 13, 2014. In the Waterbury action, Defendant Bosco alleges, *inter alia*, that on or about November 11, 2013, Bosco received a letter from NUCAP, the purported purpose of which was “to inquire about [Mr. Bosco’s] actions that reasonably may be construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009.” (Complaint at ¶24) NUCAP alleged that it understood “from its monitoring of [Mr. Bosco’s]” behavior” that Bosco had met with people to explore business opportunities and had attended the 2013 SAE Brake Colloquium. (*Id.* at ¶25) Bosco denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement. (*Id.* at ¶26) On November 18, 2013, Bosco received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium (“your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements”); (2) spoke to NUCAP’s customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation). (*Id.* at ¶27) NUCAP admitted to Bosco that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC’s business caused by Bosco’s alleged actions. (*Id.* at ¶28). Accordingly, the facts and claim of the parties are already at issue in the lawsuit previously commenced by Defendant Bosco pending in Waterbury.

II. LEGAL ARGUMENT

A. Standard Of Review In a Motion to Dismiss.

Pursuant to Practice Book §10-31, “a motion to dismiss shall be used to assert . . . improper venue.” See Practice Book §10-31; see also *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687 (1985), citing Practice Book §10-31.

"[I]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Citations omitted; internal quotation marks omitted.) *Cottman Transmission Sys. v. Hocap Corp.*, 71 Conn. App. 632, 637 (2002); *Dime Savings Bank of Wallingford v. Arpaia*, 55 Conn. App. 180, 183 (1999); *Commission on Human Rights & Opportunities v. Human Rights Referee*, 66 Conn. App. 196, 199 (2001); *Lawrence Brunoli, Inc. v. Branford*, 247 Conn. 407, 410-11 (1999).

B. Venue is Improper as None of the Parties are located within the Judicial District of New Haven.

Connecticut General Statutes §51-345(a) provides, in relevant part: " Except as provided in §51-348 and subsections (b) to (g), inclusive, of this section, all civil process shall be made returnable to a judicial district, as follows: If either or both the plaintiff or defendant are residents of this state, to the judicial district where either the plaintiff or defendant resides."

The Judicial District of Waterbury consists of the towns of “Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Watertown, Wolcott and Woodbury.” Conn. Gen. Stat. § 51-344(12) The Judicial District of New Haven consists of the following: “the towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Wallingford and Woodbridge.” Conn. Gen. Stat. § 51-344(8).

As NUCAP's Complaint makes clear, none of the parties reside in the Judicial District of New Haven. Further, there are no allegations that the Judicial District of New Haven is where the injury or alleged transaction occurred. See Conn. Gen. Stat. § 51-345(A)(1). Defendant Bosco is a resident of the Town of Wolcott, which is located in the Judicial District of Waterbury. Defendant Preferred Tool and Die is not located in the towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Wallingford or Woodbridge and is therefore not located in the Judicial District of New Haven.

Venue, therefore, is improper in the Judicial District of New Haven.

D. The Proper Remedy for Improper Venue is to Transfer the Case to the Waterbury Judicial District, not Dismiss the Action.

"The motion to dismiss shall be used to assert . . . improper venue." Practice Book § 25-13 (a) (3). "Venue . . . concerns only the place where the case may be tried, and venue requirements are created for the convenience of the parties." *Haigh v. Haigh*, 50 Conn. App. 456, 465 (1998). "[V]enue is a matter that goes to process rather than substantive rights." (Internal quotation marks omitted.) *Id.*, 466.

Once the Court determines that venue is improper and grants the motion to dismiss, the case should be transferred to the Judicial District of Waterbury. General Statutes § 51-351 provides that "[n]o cause shall fail on the ground that it has been made returnable to an improper location." By enacting § 51-351, "the legislature intended to authorize the transfer of cases"; (internal quotation marks omitted) *Sprague v. Commission on Human Rights & Opportunities*, 3 Conn. App. 484, 486 (1985); and "to provide the remedy of transfer rather than dismissal. . . ." (Internal quotation marks omitted.) *Id.*, 487; *Cassella v. Freitas*, Superior Court, Judicial District of Stamford-Norwalk at Stamford, Docket No. CV970158041S (July 24, 1997,

D'Andrea, J.). "Therefore, improper venue would only be grounds to transfer the matter, and not grounds for a motion to dismiss." (Internal quotation marks omitted.) *Espowood v. Bristol*, Superior Court, Judicial District of New Haven, Docket No. CV96-0385989S (August 6, 1996, Zoarski, S.T.R.) (17 Conn. L. Rptr. 298, 300).

Pursuant to General Statutes § 51-347b (a) and Practice Book §12-1, the Court has the authority, upon its own motion, to order the transfer of any action to a Superior Court location in another judicial district. See *Richardello v. Butka*, 45 Conn. Sup. 336, 340 (1997). In determining the appropriate venue to which to transfer a case, the Court may take into consideration the interests of justice and judicial economy. See, e.g. *Town of Stratford v. Avalon Cmtys., Inc.*, 2012 Conn. Super. LEXIS 1232 (Conn. Super. Ct. May 11, 2012); relying on *Nielsen v. Nielsen*, 3 Conn. App. 679, 684, 491 A.2d 1112 (1985); see also *Union Trust Co. v. Ramzan*, Superior Court, judicial district of Ansonia-Milford, Docket No. 033440S, 1993 Conn. Super. LEXIS 1351 (May 24, 1993, Curran, J.) (granting motion to transfer and consolidate where both actions were foreclosures involving the same parties and similar claims).

Once this Court finds that venue is improper, the proper remedy is to transfer this action to the Judicial District of Waterbury. There is currently a lawsuit captioned *Bosco v. Eyelet Tech NUCAP Corp and NUCAP Industries, Inc.*, docket # WWY-CV-14-6023433 S, pending in the Judicial District of Waterbury. The Waterbury lawsuit involves similar factual and legal issues. In the interests of justice and judicial economy, should the Court decide transfer is appropriate, Waterbury would be the proper district to transfer the case to.

III. CONCLUSION

The Judicial District of New Haven is not a proper venue for this case. The Defendant Bosco therefore respectfully requests the Court dismiss the present action or, alternatively,

transfer the present case to the Judicial District of Waterbury, which is a proper venue and such transfer is in the interest of justice and judicial economy.

THE DEFENDANT,

ROBERT A. BOSCO, Jr.

BY /s/ David A. DeBassio.

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CERTIFICATION

I hereby certify that on this 10th day of September, 2014 I mailed a copy of the foregoing
to:

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/s/ David A. DeBassio
David A. DeBassio